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Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

JUN - 4 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of

ERIC R. HILDING

JUDY YEP HUGHES

For Construction Permit for a
New FM Station on Channel 281A
in Windsor, California

To: Honorable Richard L. Sippel
Administrative Law Judge

MM DOCKET NO. 93-95

File No. BPH-911115MR

File No. BPH-911115MT

**REPLY TO OPPOSITION TO
MOTION TO ENLARGE ISSUES**

Eric R. Hilding herein submits his Reply To Opposition To
Motion To Enlarge Issues. 1/

The Hughes' document entitled Opposition To Motion To
Enlarge Issues appears to be out-of-sync with procedural
filing. The Hilding Motion To Enlarge Issues was timely filed
at the Commission on May 10, 1993 by means of an arranged for
Federal Express delivery which was nicked up in Morgan Hill.

Pursuant to the Section 1.45(a) of the Commission's Rules, the Hughes Opposition document was due within 10 (ten) days of filing of the Hilding Motion To Enlarge Issues, (plus three days since service was done by mail). The date of May 25, 1993 was beyond the due date (see Exhibit 2).

The Hughes Opposition is flawed with inconsistencies and deception to obstruct enhancement to the Commission's required mandate for determining "best practicable service". Since Hughes has claimed also claimed an emergency "backup power" preference, certainly Hughes has knowledge that this element (for which she seeks a comparative preference), was actually born out of the comparative hearing processes. What Hilding requests is no different with respect to his Pioneer (Channel Petitioner) preference claims, single-bay FM antenna and compact or digital quality music service preferences claims, et. al. for the following rational, intelligent reason:

"[Since most of the criteria currently used in comparative new and comparative renewal licensing hearings have developed through decisions in individual cases, modifying our process on a case-by-case basis would be consistent with precedent in this area. In an area such as this it is generally recognized that an administrative agency enjoys considerable discretion to utilize either ad hoc decisions or rule making for developing appropriate standards." Comparative Renewal Process, 3 FCC Rcd 5179, 5197 (1988) (footnote omitted & emphasis added). 2/

2/ Hughes had similar opportunity to take the initiative to help bring about improvement to the attributes of what the Commission refers to as "best practicable service" but failed to due so. Hughes seeks to penalize Hilding for his leadership.

Since the Commission has been remiss through its failure to take timely responsible action in these matters (and thusly depriving the public of certain meritorious improvements), this is even more justifiable reason for an appropriate enlargement of issues in this particular forum because of the far reaching public benefit implications. The Commission's mishandling and abuse of the Hilding Petition For Rule Making To Amend 1965 Policy On Comparative Broadcast Hearings and its unwarranted inaction the related pending rulemaking is good cause for the enlargement motion. Smith v. Illinois Bell Telephone Company, 270 U.S., 587-592. 3/

...I cannot believe that the public interest will be served or the processes of the Commission expedited, by the adoption of the proposed policy statement... 'there's nothing static in radio but the noise.' If we are to encourage the larger and more effective use of radio in the public interest, we must avoid becoming static ourselves.

(Dissenting Statement of Commissioner Hyde to the 1965 Policy On Comparative Broadcast Hearings),

3/ This case reflects that the commission involved, for a period of two years, remained practically dormant; and nothing is the circumstances connected that it had any intention of

The wisdom expressed by Commissioner Hyde brings even greater wisdom the rational, reasoned required for enlargement of issues. The Commission has been grossly static in failing to expedite needed revision to its extremely outdated policy. By its own admission, the processes are defective. 4/

In an age of incredible technological innovation and enhancement opportunities to inure to the public benefit by which broadcast programming quality standards and "best practicable service" requirements can be upgraded, this is indeed an appropriate forum to explore such issues.

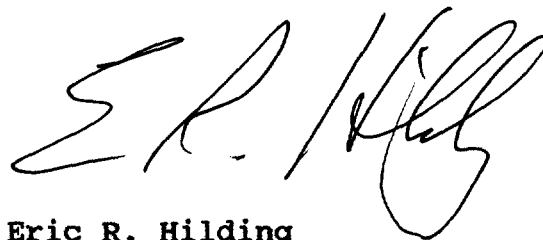
The Commission's failure to take responsible, timely prrriro action with the Hilding Petition For Rule Making and to promptly follow through of its own initiative to correct its defective new applications processing procedures has been unpardonable, for which Hilding seeks relief pursuant to any available provision of the Administrative Procedures Act.

There are no findings and no analysis here to justify the choice made, no indication of the basis on which the [agency] exercised its expert discretion. We are not prepared to and the Administrative Procedures Act

Hughes alleges that Hilding's motion is irrational, which is contrary to the fair, just and rational purportations actually contained therein. Indeed, the irrationalities of the existing defective comparative hearing policy are aptly characterized in The (Horror) Story Of Mr. White (Exhibit 1).

Eric R. Hilding declares under penalty of perjury that the foregoing is true and correct to the best of and/or of his personal knowledge.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'E.R. Hilding', with a large, stylized flourish at the end.

Eric R. Hilding

w/Certificate Of Service

Eric R. Hilding
P.O. Box 1700
Morgan Hill, CA 95038-1700
Tel: (408)778-0900

Date: June 3, 1993

THE (HORROR) STORY OF MR. WHITE

as related by Eric R. Hilding

Once upon a time there was a caucasian male appropriately named Mr. White. About 10 years ago, Mr. White's father was able to save enough money and secure moderate financing to purchase a low power FM station licensed to a small community in the midwest. After graduation from college, Mr. White joined his father in the family business of running the station. Upon the Sr. White's retirement, he then assumed responsibility as General Manager of the station and eventually acquired 40% ownership.

Mr. White was the ideal FCC licensee. In addition to being a very responsible broadcaster, he received numerous awards for humanitarian contributions. As a member of various local civic organizations, Mr. White was committed to the programming of wholesome entertainment and made available generous time on the station for local charity public service announcements. He also initiated special educational programettes to help in the fight against drug abuse. Mr. White broadcast the weekly town council meetings over the station for the benefit of the rural farming community residents, who could not always come into town during severe weather conditions.

During a major tornado disaster, Mr. White's station was the key emergency news source. His numerous contributions to public resulted in Mr. White being selected as Citizen of the Year in both his community and the State. The local advertisers gave Mr. White a special recognition dinner for the exceptional service rendered by the station, and for Mr. White's commitment to providing a reasonable rate structure for merchants. Mr. White's philosophy was that of both service and value before personal profit.

Unfortunately, Mr. White contracted a rare illness which his physician said would require him to move to a different climatic area for lifelong treatment, and within two years. Mr. White realized that this could put an end to his broadcast career, since he owned only 40% of the small midwest community family station valued at \$250,000. The prospects of purchasing a station in the new area (where the smallest facility would cost \$3,000,000), were at best, futile. Even so, Mr. White contacted 7 broadcast brokers, but found no existing stations for sale.

Not being one to give up easily, Mr. White commissioned a well known engineering firm to see if there were any possibilities of starting a new station.

From an economic standpoint, this seemed to be the only hope of continuing his career as a broadcaster. He was informed that there were no unused frequencies available, but decided to persist in trying to find some way to overcome the possibilities. Mr. White hired another firm to look for the possibility of some type of "substitution" proposal in order to solve the problem. After many months and thousands of dollars expended, a solution was still not found.

Mr. White was a persistent person. He was convinced that there must be a solution, and decided to learn about the broadcast allocations engineering processes himself. After spending at least an hour each night for one year, Mr. White determined that at long last a unique complex substitution of frequencies would yield a new FM channel. And in view of several "X Rated" format stations in the community, Mr. White believed there was an important need for his wholesome music entertainment format used in the midwest. So the community would now eventually be able to have an alternative source of programming, and receive the benefit of Mr. White's value and experience as a broadcaster. So it seemed.

Upon filing of his Petition for Rule Making to effectuate the channel allotment, Mr. White encountered opposition. Several of the "big guns" in town did not want additional competition. In spite of 300,000 people added to the metro population with no additional stations, the local players didn't want him in town.

Mr. White, however, believed he could make a contribution. Especially strong was his desire to see programming allocated to bring about anti-drug education to young people in the evenings. He was forced to spend thousands of dollars in legal fees as well as personal time and stress to fight for his new allocation. His persistence paid off. The FCC ultimately decided that it was in the public interest, convenience and necessity to provide for the new channel allotment for which Mr. White had petitioned.

Mr. White was delayed in moving to Arizona because of the difficulties in finding a replacement manager to run the midwest family station. Due to the FCC's filing window for the his new channel allotment which opened earlier than expected, Mr. White had to file his application about 30 days before relocating. Due to the desirability of the new broadcast opportunity, 15 other

parties filed mutually-exclusive applications. Mr. White was devastated.

This now meant up to \$30,000 or more per applicant in hearing process litigation fees, or about \$450,000 with absolutely no guarantee of even being granted the Construction Permit. And, the likelihood of the proceeding being dragged out for many years while the Washington attorneys played a "poker game" with the system. Mr. White's new FM station channel was like a fresh meadow muffin dropped in the barnyard on a sweltering summer day. All the flies promptly swooped in for the feast.

Mr. White unable to bear the economic burden of such a costly proceeding (he was buried before he got started). He was hopeful that competing applicants would be minimal or none at all. Based upon the 1965 Policy on Comparative Broadcast Hearings, super all-American citizen Mr. White would be assured of the following:

1. In spite of being a model citizen and broadcaster, he would receive no "local residence" credit. Mr. White filed his application before being able to move to the area (where he would have to live the rest of his life due to health). And since 10 local residents were among the 15 competing applicants, Mr. White would assuredly lose in this policy preference attribute, and receive zero credit. Even if Mr. White filed after relocating, any other applicant with longer local residence would win.

2. Mr. White is a white male. 5 of the 15 other applicants were female, which meant that Mr. White would lose again (for involuntarily born a male). He would receive zero credit for this policy preference attribute simply because he was born a male instead of female. How absurd.

3. Since 7 of the 15 other applicants were either hispanic, asian or black, for the third preference Mr. White would also lose for involuntary reasons as a result of the FCC's reverse discrimination in a comparative broadcast hearing. In other words, Mr. White would again receive zero credit in this attribute because he was born "white" instead of hispanic, asian or black. Reverse discrimination!

4. Even though Mr. White's perfect record and experience as a broadcaster would qualify him as an ideal owner/operator, for health reasons his physician suggested that he work a maximum of 29 hours per week personally

(Cont'd...)

at the new station. Since Mr. White could therefore not meet an integration commitment of 40 (or more) hours per week, he would most assuredly again lose since all 15 other applicants alleged to meet the maximum preference attribute credit requirement for 40 (or more) hours per week. Ridiculous.

5. In the area of civic service preference attribute credit, Mr. White would bite the bullet again because not one of his valuable civic contributions took place within the service area of the new area station. In spite of his substantial civic service history which would undoubtedly continue in the new environment, Mr. White would receive no credit. What a reward for past public service!

6. The FCC currently allows any person, corporation or other legal structure to own up to 12 AM, 12 FM and 12 Television stations without penalty. However, in a new broadcast application proceeding, severe penalties are imposed for any degree of other ownership. In the case of Mr. White, his desire to retain the 40% ownership in the old family station or any involvement whatsoever in the management thereof would screw him again. Since 14 of the other 15 applicants either had no broadcast ownership involvement or promised to divest of same if awarded the permit, model citizen and experienced broadcaster Mr. White would lose again because of the Commission's 1965 Policy. One of the other applicants, however, would actually be the recipient of a preference credit because of owning a "Daytime Only" standard broadcast station in the same new service area. This applicant had owned the AM Daytimer for 10 years, and yet took no initiative to bring about the new FM service. Worse yet, during Mr. White's costly legal battle in the rulemaking processes, the owner of the Daytimer station didn't even file supporting comments to assist in obtaining the channel allotment. Because of an amendment to the 1965 Policy, the 100% owner would receive preferential treatment while channel initiator Mr. White ends up with zip squat for having spent all his time and money in the allotment processes. The 1965 Policy is highly irrational, and makes mockery of leadership by its imposing penalties on leaders. A channel petitioner should have the first right to file.

7. Mr. White's only hope for any type of preference attribute in the new market channel comparative broadcast hearing would be for his past broadcast experience. Rated as the least important in a new application proceeding, his past

experience (and only credit received) would be like a fly dropping in the soup bowl of overall attribution credits. Mr. White, as a small businessman, was forced to withdraw his application because of the excessive litigation expenses. He was aware that a channel petitioner in California had been experienced similar problems, and had been seeking reform of the 1965 Policy. Mr. White knew that the Federal Communications Commission had time and time again refused to admit that its system was ineffective and discriminatory. He knew the Californian had even sought relief in the U.S. Court of Appeals, however justice was apparently not being served. At last word, the Californian had still been waiting for over four (4) years for the FCC to act on his Petition for Rule Making to Amend 1965 Policy on Comparative Broadcast Hearings. Mr. White went into deep depression over the whole matter for the next six months.

As he was beginning to recover, Mr. White picked up a copy of Broadcasting, and read an article which caused him to vomit. It seemed that the FCC had allowed a wealthy "White Knight" to enter the new channel proceeding a buy off each of the 15 applicants. This mysterious White Knight had not even filed an application or been forced to endure the hardships imposed by the 1965 Policy. Mr. White recalled his night after night exercises in trial and error experimentation with the FM frequency spectrum. And he remembered the thousands of dollars and time spent in fighting off local opposition to getting the channel assigned. But the most depressing memories were of being forced to withdraw his own application because of the high litigation costs, and reality that he could never have prevailed due to the reverse discrimination and other insidious credit attributes awarded others who simply leaped on the bandwagon after Mr. White had done all the up front work. "What a way to run a country", thought Mr. White, as he recalled from history many of the reasons why the Pilgrims first came to America. And he thought about the Constitution, and wondered what happened to the real meaning behind "equal opportunity".

Mr. White turned to gaze upon the framed Dissenting Statement of Commissioner Hyde upon implementation of the 1965 Policy:

"...I cannot believe that the public interest will be served or the processes of the Commission expedited, by the adoption of the proposed policy statement... 'there's nothing static in radio

but the noise.' If we are to encourage the larger and more effective use of radio in the public interest, we must avoid becoming static ourselves."

Several months went by when Mr. White apprehensively picked up the current issue of Broadcasting to see what was happening. He promptly vomited again after reading that the FCC was trying to implement a lottery system in lieu of a comparative hearing cycle. It was not the lottery concept which upset Mr. White, but that the Commission was still seeking to utilize female and minority type preferences, and to force channel petitioners to endure the same type of discrimination experienced for 24 years without change. Mr. White realized that even a token preference credit for channel petitioners would still not cure the underlying problem of FCC administrative inefficiency, let alone the delays in bringing new service to the public. And very few new channels would be created.

Mr. White decided that the only solution was to write to each of the Congressmen and Senators involved with subcommittees which oversee the FCC. "These powerful and responsible public servants are the only ones who can bring about sorely needed changes", he thought. And Mr. White was confident that these human dynamos of Democracy would realize the deleterious effects of failing to cure the real underlying problem in new broadcast applications processing. "They should know that we need to put the time tested, proven methods for performance back into operation", he exclaimed, "The good old-fashioned incentive system which rewards leadership".

He began his letter with "I come from the midwest, where he who works the land earns the harvest". "We have learned some other wisdom too", he added. Mr. White paused for a moment, and then continued. "You can't make chicken soup out of chicken poop."

Eric R. Hilding is a channel creator/finder/developer responsible for the allotment of more than 15 new FM channels in California. Due to Reverse Discrimination, he still has no station of his own. Since authoring this article in 1989, Hilding has found it to be the Congressmen and Senators who are largely to blame for perpetuating the unfair, inefficient system which has contributed to the National Debt.

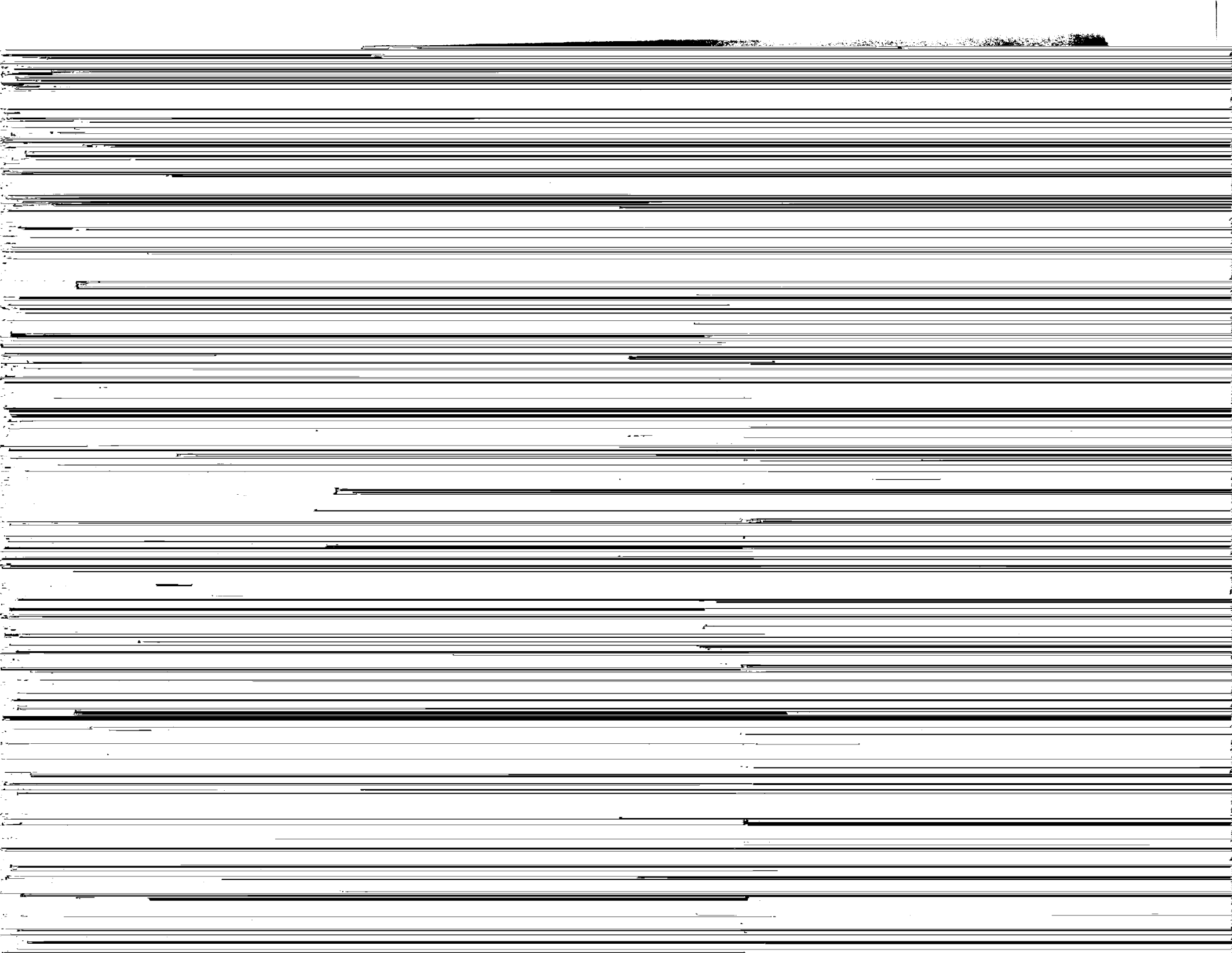
CERTIFICATE OF SERVICE

I, Peter A. Casciato, certify that the following is true and correct:

I am employed in the City and County of San Francisco, California, am over the age of eighteen years, and am not a party to the within entitled action:

My business address is: 1500 Sansome St., Suite 201, San Francisco, California 94111.

On May 25, 1993, I caused the attached Opposition to Motion to Dismiss of Judy Van Hughes and accompanying documents



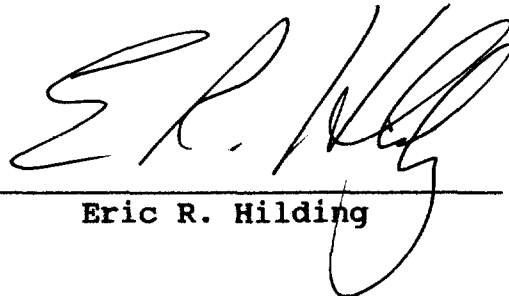
CERTIFICATE OF SERVICE

I, Eric R. Hilding, under penalty of perjury, hereby declare that a copy of this "REPLY TO OPPOSITION TO MOTION TO ENLARGE ISSUES" has been sent via First Class Mail, U.S. postage prepaid, today, June 3, 1993, to the following: (*)

Honorable Richard L. Sippel (**)
Administrative Law Judge
Federal Communications Commission
2000 L Street, N.W., Room 214
Washington, D.C. 20554

Norman Goldstein, Counsel of Record (**)
Hearing Branch, Enforcement Division
Mass Media Bureau
Federal Communications Commission
2025 M Street, N.W., Suite 7212
Washington, D.C. 20554

Peter A. Casciato, Esquire
A Professional Corporation
1500 Sansome St. #201
San Francisco, CA 94111
- Counsel for Judy Yep Hughes

A handwritten signature in black ink, appearing to read "E.R. Hilding", is written over a horizontal line.

Eric R. Hilding

- (*) Original filing via Federal Express
- (**) Envelope included in FCC F/E Package